

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY FOR ACTION ON RULE AMENDMENTS**

Agenda # III.A.1.

Agenda Item Summary. The Board proposed repeal of a rule and adoption of new rules and rule amendments implementing the Opencut Mining Act.

List Of Affected Rules. ARM 17.24.201 through 17.24.215.

Affected Parties Summary. The proposed rule amendments will affect operators regulated by the Department under the Opencut Mining Program. The proposed amendments will affect adjacent property owners and the public by affording, or more specifically implementing, a degree of protection from certain opencut operation impacts.

Scope Of Proposed Proceeding. The Board is considering final action in this rulemaking proceeding.

Background. The purposes of the proposed new rules, rule amendments, and rule repeal are to:

1. Address changes in the Opencut Mining Act passed by the State Legislature in 2001.
2. Place the focus of the rules on the entire opencut operation process of mining, processing, and reclamation.
3. Incorporate changes resulting from years of administering the rules and laws under the Opencut Mining Program and opencut operator experience and suggestions.
4. Improve and clarify the Plan of Operation requirements, including the incorporation of basic performance standards.
5. Clarify the permit, amendment, and assignment review, approval, and disapproval procedures and criteria.
6. Adopt new rules that address permit compliance mandates and accountability standards.
7. Make changes throughout the text of the rules for consistency and clarity, and to eliminate duplicative and unnecessary text.
8. Establish a set of contemporary and accurate definitions for terms used in the field of opencut operations.
9. Formalize enforcement procedures that the Department is currently following for opencut mining violations.

Hearing Information. Notice of hearing was published in the Montana Administrative Register on October 16, 2003. A public hearing was held on November 5, 2003. The comment period closed on November 14, 2003. The presiding officer's report is attached.

Board Options. The Board may:

1. Adopt, amend, and repeal the rules as proposed in the Notice of Hearing;
2. Adopt, amend, and repeal the rules with modifications; or
3. Determine that it will not adopt, amend, or repeal the rules.

DEQ Recommendation. The Department recommends that the Board adopt, amend, and repeal rules in the manner set out in the attached draft notice of adoption, amendment, and repeal.

Enclosures.

1. Notice of Public Hearing
2. Presiding Officer's Report
3. Draft Notice of Adoption